

Michigan Advisory Commission on Indigent Defense Findings and Recommendations

Presented by Judge James Fisher, Chairman
Michigan House of Representatives
Committee on Judiciary
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Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and a district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

United States Constitution, Amendment VI

ABA Ten Principles

1. The public defense function, including the selection, funding, and payment of defense counsel, is independent.
2. Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.
3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible, after clients' arrest, detention, or request for counsel.
4. Defense Counsel is provided sufficient time and a confidential space within which to meet with the client.
5. Defense Counsel's workload is controlled to permit the rendering of quality representation.
6. Defense Counsel's ability, training, and experience match the complexity of the case.
7. The same attorney continuously represents the client until completion of the case.
8. There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.
9. Defense counsel is provided with and required to attend continuing legal education.
10. Defense Counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

Finding #23

The commission finds that Michigan's current system of providing legal representation for indigent criminal defendants lacks procedural safeguards to ensure effective public criminal defense services.

*Report of the Michigan Advisory Commission,
June 22, 2012*

Current Indigent Defense System

- 57 Different Circuit Court Plans
- 83 Different Probate Court Plans
- 98 Different District Court Plans
- Grosse Pointe Municipal Courts

County Systems for Indigent Defense

- Public Defender Systems
 - Contracts with Counsel and their law firms
 - Counsel Assigned by Chief Judges or other entities
 - Combination of any or all systems
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Indigent Defense Spending per Capita by County

Michigan Counties range from just under \$2 per capita to just over \$12 per capita spending.

Michigan Ranks 44th in per capita spending at an approximately \$7.35 average when compared with both capital punishment and life states.

A Race to the Bottom, National Legal Aid &
Defender Association, June 2008

Comparison of State Funding of Indigent Defense Services

- Michigan is one of 7 states that funds its indigent defense system with 100% county funding.
- The majority of states fund their Trial-Level Indigent Defense systems with over 50% state funding.

Other Differences by County

- Different Levels of Resources for Investigations and expert witnesses.
 - Different methods of compensation
 - Different requirements for experience, training, competence, CLE or none at all
 - Different levels of judicial control/involvement
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Outcomes

- Statewide Standards will be enforced
- Errors by Trial Counsel/Ineffective Assistance of Counsel Claims
- Sentencing Errors Reduced
- Financial Savings

Local Control

- The commission recommends local control of indigent defense systems remain in place.
- ABA Ten principles are applied but substantial differences across the state are taken into consideration.
- Significant and meaningful judicial participation, but avoids problems by discouraging judges from hand-picking attorneys.

Unfair Burden to Local Units

Nearly all other functions of the court are a shared responsibility between the state and the local funding units. Indigent defense has been left totally to the local units with the state paying no share of the expense.

Measurable Results and Data Collection

Data collection regarding costs and methods of payment of court-appointed counsel is not reliable and not able to be analyzed with great success.

Varying types of indigent defense appointments are included in the data by counties (criminal, mental commitment, neglect and delinquency, for example), it is impossible to state with certainty that the amounts reported accurately reflect all payments for all types of counsel appointments.

Recommendation:

One of the tasks of a permanent commission would be to verify the amounts spent on statewide appointed counsel, and to gather accurate data regarding all aspects of court-appointed counsel systems so that the decisions could be made based on good information.

Sixth Amendment

Right to Counsel

- “The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with the crime has to face his accusers without a lawyer to assist him. “ *Gideon v. Wainwright* 372 U.S. 335 (1963)

Sixth Amendment Important to all Stakeholders

Anyone accused of a crime has the right to an attorney who has the experience, training and resources to do a good job.

Courts have the right to have competent attorneys who show up in court on time and prepared.

The public has a right to pay attorneys a reasonable amount for their services.

Every member of society has a right and an interest in ensuring that convictions and loss of freedom are based on accurate and fair results.

Summary of Recommendations

- Permanent Commission should be established to establish and enforce standards and encouraging best practices
- Local control over delivery systems
- Guiding Standards follow the ABA Ten Principles
- Commission should be autonomous and housed in Judicial Branch
- The appointing authority should be balanced through all three branches of state government
- Commission should be subject to FOIA
- Funding should be available to hire staff that will assist commission to develop standards and oversee implementation of standards
- State funding should be made available through the annual appropriations process at times and in amounts necessary to meet the demonstrated and quantified needs of local systems to meet the minimum standards established.